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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **OAKLAND DIVISION**

12 IN RE: LITHIUM ION BATTERIES  
13 ANTITRUST LITIGATION

Case No. 4:13-md-02420-YGR

MDL No. 2420

14 This Document Relates to:

15 ALL ACTIONS  
16  
17

**THE NATIONWIDE GROUP'S  
STATEMENT ON LEADERSHIP AND  
APPLICATION FOR APPOINTMENT TO  
PLAINTIFFS' STEERING COMMITTEE**

## **I. INTRODUCTION**

Pursuant to the Court's March 4, 2013 Order (ECF No. 8), the Nationwide Group<sup>1</sup>, on behalf of 27 plaintiffs from 20 different indirect purchaser states and Puerto Rico, respectfully proposes, consistent with the MANUAL ON COMPLEX LITIGATION (FOURTH), that the Court appoint a leadership structure as follows:

- Interim Co-Lead Counsel
- Plaintiffs' Steering Committee ("PSC")

Additionally, as set forth below, the Nationwide Group, which represents the largest number of plaintiffs and indirect purchaser states, respectfully requests that the Court appoint four of its members: (1) Scott+Scott, Attorneys at Law, LLP; (2) Schneider Wallace Cottrell Konecky LLP; (3) Branstetter, Stranch & Jennings PLLC; and (4) The Lexington Law Group, to the PSC.

## **II. APPOINTMENT OF LEADERSHIP STRUCTURE**

### **A. Interim Co-Lead Counsel**

The Nationwide Group originally supported Scott+Scott for lead counsel. However, in order to promote the prompt resolution of a leadership structure in this action and promote a broad-based, consensual group of firms and plaintiffs, the Nationwide Group no longer seeks Scott+Scott's

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<sup>1</sup> The law firms comprising the Nationwide Group are: Altshuler Berzon, LLP, Branstetter, Stranch & Jennings PLLC, Davis & Taliaferro LLC, Doyle Lowther LLP, Emerson Poynter LLP, Langston & Lott, P.A., the Lexington Law Group, Luis E. Minana & Associates, Schneider Wallace Cottrell Konecky LLP, Scott+Scott, Attorneys at Law, LLP ("Scott+Scott"), and the Wood Law Firm. They represent plaintiffs Rebecca Cervanek, John Russo (plaintiffs in *Russo v. LG Chem Ltd.*, 13-cv-00778), Matthew Miller, Rachel Miller (plaintiffs in *Miller v. LG Chem, Ltd.*, 13-cv-00779), Benjamin Kramer, James Smith, Angela Turner, Katherine Wirkus (plaintiffs in *Turner v. LG Chem Ltd.*, 13-cv-00781), Brian Caleb Batey (plaintiff in *Batey v. LG Chem America Inc.*, 13-cv-00787), A-1 Computers, Inc. (plaintiff in *A-1 Computers Inc. v. LG Chem, Ltd.*, 13-cv-00788), Meghan Dowling, Drake Dailey-Chawlibog, Michael Hull, David Shawn (plaintiffs in *Shawn v. LG Chem America, Inc.*, 13-cv-00792), Kim Billingsley (plaintiff in *Billingsley v. LG Chem America Inc.*, 13-cv-00795), Michael James Doyle (plaintiff in *Doyle v. LG Chem America, Inc.*, 13-cv-00798), Chad Conover, Susanne Hiller, Robert Hyams, Mathew Weiner (plaintiffs in *Conover v. LG Chem America, Inc.*, 13-cv-00801), Thomas Tuohy (plaintiff in *Tuohy v. LG Chem, Ltd.*, 13-cv-00803), Beverlee Sclar (plaintiff in *Sclar v. LG Chem America, Inc.*, 13-cv-00884), Linda Lincoln (plaintiff in *Lincoln v. LG Chem, Ltd.*, 13-cv-01131), Beatriz Hernandez (plaintiff in *Hernandez v. LG Chem, Ltd.*, 13-cv-01189), Jason Ames, Wilbur Franklin (plaintiffs in *Ames v. LG Chem, Ltd.*, 4:13-cv-01194), and KCN Services LLC (plaintiff in *KCN Services LLC v. LG Chem, Ltd.*, 13-cv-00119 (D. Hawaii)).

1 appointment as a co-lead counsel. Instead, the Nationwide Group supports the selection of Lieff,  
 2 Cabraser, Heimann & Bernstein, LLP (“Lieff Cabraser”) and Cotchett, Pitre & McCarthy LLP  
 3 (“Cotchett”) as Interim Co-Lead Counsel for all indirect purchaser actions. These respected Bay  
 4 Area firms are comprised of excellent lawyers and possess the experience and resources necessary to  
 5 effectively lead this case through the pleadings stage, class certification, discovery, and to trial.  
 6 Lieff Cabraser and Cotchett also have the leadership skills necessary to coordinate and organize the  
 7 resources of the various firms that are necessary to successfully prosecute this matter. The excellent  
 8 qualifications of Lieff Cabraser and Cotchett will be more fully set forth in their separate application  
 9 for leadership. As Interim Co-Lead Counsel, they will have powers and responsibilities set forth in  
 10 the Manual, §§10.221-22 (noting duties and responsibilities that lead, liaison, trial counsel and  
 11 committees have in managing the litigation) and have agreed to work cooperatively with the  
 12 members of the PSC.<sup>2</sup>

#### 13 **B. Plaintiffs’ Steering Committee**

14 The Court’s March 4 Order stated the Court intended to appointment a PSC “to conduct and  
 15 coordinate the discovery stage of this litigation.” ECF No. 8 at 5. “The main criteria for  
 16 membership in the PSC will be: (a) willingness and availability to commit to a time-consuming  
 17 project; (b) ability to work cooperatively with others; and (c) professional experience in this type of  
 18 litigation.” (*Id.*) Additionally, the Court ordered “[a]pplications/nominations should succinctly  
 19 address each of the above criteria as well as any other relevant matters.” *Id.*

20 Consistent with the Court’s Order, the Nationwide Group respectfully requests the  
 21 appointment of four of its member firms to the PSC: (1) Scott + Scott; (2) Schneider Wallace  
 22 Cottrell Konecky LLP; (3) Branstetter, Stranch & Jennings PLLC; and (4) The Lexington Law  
 23 Group. As set forth below, each of these firms is well-qualified to serve on the PSC. A copy of each  
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25  
 26 <sup>2</sup> To the extent the Court does intend to appoint separate Interim Co-Lead Counsel, the  
 27 Nationwide Group supports the appointment of Lieff Cabraser and Cotchett as Co-Chairs of the  
 28 PSC.

1 firm's resume is submitted as Exhibits A-D to the Declaration of Christopher Burke filed herewith  
 2 ("Burke Decl.").

3 **1. The Nationwide Group Provides the Broadest Representation for All**  
 4 **Indirect Purchasers**

5 The above members of the Nationwide Group seek appointment to the PSC for all indirect  
 6 purchaser actions. Under well-settled Supreme Court precedent (subject to narrow exceptions), only  
 7 a direct purchaser is "injured in his business or property" within the meaning of §4 of the Clayton  
 8 Act (which provides a private right of action for damages for violations of the antitrust laws).  
 9 *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 729 (1977). The laws of about half the states, however,  
 10 do not follow *Illinois Brick*, and allow recovery for indirect purchasers. ABA SECTION OF  
 11 ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS, pp. 650-654 (7<sup>th</sup> ed. 2012). Representation by  
 12 plaintiffs from states that allow for indirect purchaser recoveries maximizes the potential recoveries  
 13 for all indirect purchasers.

14 The Nationwide Group provides the broadest representation of indirect purchaser states  
 15 among indirect purchaser counsel. *See* Burke Decl., Ex. E (Nationwide Group Indirect Purchaser  
 16 Chart). The Nationwide Group represents plaintiffs in 21 different states and territories with **12**  
 17 ***states and territories being unique*** to the Nationwide Group. The Nationwide Group plaintiffs hail  
 18 from Arizona, Arkansas, California, Florida, Hawaii, Maine, Massachusetts, Michigan, Mississippi,  
 19 Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Puerto Rico,  
 20 Tennessee, Utah, Vermont, West Virginia, and Wisconsin. Based on a review of the cases filed this  
 21 far, as of March 27, 2013, the Nationwide Group is the only leadership group that represents  
 22 plaintiffs that have indirectly purchased in the following 12 states and territories: Arizona, Arkansas,  
 23 Hawaii, Maine, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, Puerto Rico, Utah,  
 24 and Vermont. This broad representation provides the potential to maximize recovery for all indirect  
 25 purchasers and weighs in favor of appointing the members of the Nationwide Group to the PSC.

1                   **2.     The Members of the Nationwide Group Meet the Court's Criteria for**  
2                   **Appointment to the PSC**

3             In addition to representing a broad group of plaintiffs from all over the United States, the  
4     Nationwide Group's members meet the Court's criteria for membership on the PSC. They are each:  
5     (a) willing and able to commit the resources necessary to prosecute this litigation through trial and  
6     appeals; (b) willing and able to work cooperatively with the other counsel appointed to the PSC by  
7     the Court; and (c) have the professional experience in class action antitrust litigation required to  
8     provide successful results to all indirect purchaser plaintiffs.

9             First, the Nationwide Group has ample financial resources and human capital to effectively  
10    prosecute this case. This is demonstrated by the previous successes each firm has had in  
11    successfully prosecuting class actions of this nature. Moreover, the Nationwide Group has  
12    demonstrated its commitment to this litigation by dedicating substantial time, resources, and efforts  
13    since being retained by the named plaintiffs.

14            Second, the Nationwide Group has been and will continue to work cooperatively with firms  
15    from other groups. The Nationwide Group's commitment to work cooperatively with other firms in  
16    the best interests of indirect purchasers is succinctly demonstrated by its support for the appointment  
17    of additional firms outside of its group to the PSC.

18            Finally, the Nationwide Group's counsel have substantial antitrust class action experience,  
19    including trial experience, and are a strong, cohesive, and focused team committed to consumer  
20    protection. The Nationwide Group has substantial experience in procedural organization, motion  
21    practice, consolidated pleadings, and complex and high-volume discovery, including electronically  
22    stored information. The members of the Nationwide Group have tried numerous complex actions  
23    including in this Court that have resulted in substantial recoveries for their clients and class  
24    members. As set forth in their respective resumes, the Nationwide Group's members are well-  
25    qualified and have acted as lead counsel, co-lead counsel, members of steering or executive  
26    committees, and liaison counsel in a number of complex matters over the last 30 years.

**a. Scott+Scott, Attorneys at Law, LLP**

With offices in California, Connecticut, New York, and Ohio, Scott+Scott has a proven track record of successfully handling large complex class actions, achieving substantial settlements and, when necessary to secure the best relief for its clients, taking cases to trial. In January and February of this year, Scott+Scott served as co-trial counsel in a five week-long antitrust class action trial, challenging arbitration clauses as a restraint of trade. *Ross v. American Express Co.*, No. 1:04-cv-05723 (S.D.N.Y.) In December 2012, Scott+Scott took the lead role at a two-day summary judgment hearing in *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass.), an antitrust class action challenging bid-rigging and market allocation in the multi-billion dollar private equity/leveraged-buyout industry.

Scott+Scott also has significant experience litigation antitrust class actions on behalf of indirect purchasers. Recent leadership examples in indirect purchaser antitrust class actions include:

- *In re Lipitor Antitrust Litigation*, 3:12-cv-2389-PGS-DEA (D. N.J.) (end payor action) (member of end payor class plaintiffs' Executive Committee);
- *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, 12-cv-3824 (E.D. Pa) (indirect purchaser action) (lead counsel);
- *In re Skelaxin (Metexalone) Antitrust Litigation*, 1:12-cv-194 (E.D. Tenn.) (end-payor action) (member of steering committee);
- *In re Nexium (Esomeprazole) Antitrust Litigation*, 1:12-md-2409-WGY (D. Mass) (end-payor action) (member of executive committee);
- *In re Prograf Antitrust Litigation*, 1:11-cv-2242-RWZ (D. Mass) (indirect purchaser action) (member of the plaintiffs' executive committee);
- *In re Effexor XR Antitrust Litigation*, 3:11-cv-5661 (D. N.J.) (end-payor action) (member of plaintiffs' executive committee);and
- *In re Korean Air Lines Co., Ltd. Antitrust Litigation*, 2:07-cv-06542-SJO-AGR (co-lead counsel for indirect purchaser plaintiffs).

A copy of Scott+Scott's résumé is attached to the Burke Decl. as Exhibit A.

**b. Schneider Wallace Cottrell Konecky LLP**

Schneider Wallace has 16 attorneys located in three offices, including in the Bay Area. Schneider Wallace litigates class actions throughout the United States. Among the other putative antitrust class actions in which it is currently counsel are *In re Cox Enterprises Inc., Set-Top Cable Television Box Antitrust Litigation*, 5:09-ml-02048-C (W.D. Okla.) (a pending consolidated antitrust putative class action alleging that one of the nation's largest cable providers impermissibly tied sales of set-top boxes to sales of premium cable services); *In re Nexium (Esomeprazole) Antitrust Litigation*, 1:12-md-2409-WGY (D. Mass) (end-payor action) (alleging that the defendants engaged in an illegal conspiracy to delay the entry of generic versions of pharmaceuticals resulting in higher prices for consumers and health care payors); and *McCananey v. GlaxoSmithKline LLC*, 2:12-cv-06721-WHW-CLW (D.N.J.) (same). Schneider Wallace has served as class counsel in a number of cases that have reached favorable settlements in this Court, including *Labrador v. Seattle Mortgage Co.*, 3:08-cv-02270-SC (N.D. Cal.); *Lopez v. San Francisco Unified School District*, 3:99-cv-03260-SI (N.D. Cal.); *Satchell v. FedEx Express, Inc.*, 03-cv-02659-SI (N.D. Cal.); and *National Federation of the Blind v. Target Corp.*, 06-cv-01802-MHP (N.D. Cal.). Other notable class action settlements obtained by Schneider Wallace include *Holliman v. Kaiser Foundation Health Plan*, No. RG 05247858 (California Superior Court, Alameda County); *Singleton v. Regents of the University of California*, No. 373059 (California Superior Court, Alameda County) and *Rosa v. Morrison Homes*, No. 373059 (California Superior Court, Stanislaus County). A copy of Schneider Wallace's résumé is attached to the Burke Decl. as Exhibit B.

**c. Branstetter, Stranch & Jennings PLLC**

Branstetter, Stranch, and Jennings, PLLC, ("Branstetter") are exceptionally qualified to manage antitrust complex class action litigations. Branstetter took the first case to the Tennessee Court of Appeals which established that indirect purchasers have a private right of action under Tennessee's Trade Practices Act, Tenn. Code Ann. §§47-25-101, *et seq.* *Sherwood v. Microsoft Corp.*, Case No. M2000-01850-COA-R9-CV, 2003 Tenn. App. LEXIS 539 (July 31, 2003). Branstetter is also believed to have tried the first class action in Tennessee following the adoption of



Rule 23, which led to Branstetter recovering 100% of a jury verdict on behalf of employees injured by unlawful activities by the board of directors of Frosty Morn Inc. *Ewin v. Neuhoff* (Law and Equity Court, Montgomery County, Tennessee). Moreover, Branstetter has successfully managed numerous large complex class actions across the country alleging violations of antitrust laws. *See, e.g., In re Wellbutrin XL Antitrust Litig.*, Case No. 08-2433 (E.D. Pa.) (end-payor action, co-lead counsel); *In re: Prograf Antitrust Litigation*, 1:11-cv-2242-RWZ (D. Mass) (end-payor action, co-lead counsel); *In re Skelaxin (Metexalone) Antitrust Litigation*, 1:12-cv-194 (E.D. Tenn.) (end-payor action, lead counsel); *Dahl v. Bain Capital Partners, LLC*, Case No. 07-12388 (D. Mass.) (Sherman Act action, counsel); *In re: Qwest Savings and Investment Plan ERISA Litigation*, No. 02-RB-464, (D. Colo.) (ERISA action, co-lead counsel); *In re Nortel Networks Corp. "ERISA" Litigation*, No. 3:03-MD-1537 (M.D. Tenn.) (ERISA action, co-lead counsel) and *(Lankford v. Dow Chemical., No. 04-1517 (Davidson County Circuit, Tennessee) (end-payor and consumer fraud action, lead counsel)*. Given this wide breadth of class experience, Branstetter is well positioned to provide meaningful leadership in the case at bar. Additionally, Branstetter is well staffed with well-qualified attorneys; numerous members of the firm are listed in the Best Lawyers in America and have the coveted Martindale Hubble AV rating. A copy of Branstetter's résumé is attached to the Burke Decl. as Exhibit C.

**d. The Lexington Law Group,**

Located in the Bay Area, for over 27 years, the Lexington Law Group has represented plaintiffs in complex consumer litigation. The firm has a proven track record of vigorous and effective advocacy that has resulted in the recovery of millions of dollars for consumers. Recent examples of antitrust and other consumer cases where the firm had a leadership role include:

- *In Re WellPoint Out-of-Network UCR Rates Litigation*, 2:09-ml-02074 (N.D. Cal.) (co-lead counsel for subscriber plaintiffs);
- *Brown v. Hain Celestial Group*, 3-11-cv-11-03082 (N.D. Cal.) (class counsel);
- *In re: Comcast Peer-to-Peer (P2P) Transmission Contract Litigation*, 2:08-md-01992 (E.D. Pa.) (class counsel);



- 1 • *Lyons v. Coxcom, Inc. dba Cox Communications*, 3:08-cv-02047 (S.D. Cal.) (class
- 2 counsel);
- 3 • *Dervaes v. Blue Shield of California*, Alameda County Superior Court Case No. RG
- 4 06-262733 (class counsel); and
- 5 • *State of California v. Burlington Coat Factory*, Alameda County Superior Court
- 6 Case No. RG 06-262733 (co-litigation with California Attorney General).

7 A copy of the Lexington Law Group résumé is attached to the Burke Decl. as Exhibit D.

8 **3. The Nationwide Group's Appointment to the PSC Enjoys the Support**  
 9 **of Additional Firms in this Action and Supports the Inclusion of**  
 10 **Others**

11 The Nationwide Group's appointment to the PSC is supported by other law firms in this  
 12 litigation. Proposed Interim Co-Lead Counsel Lief Cabraser and Cotchett support the appointment  
 13 of Scott+Scott from the Nationwide Group's to the PSC. Additionally, as set forth in their respective  
 14 papers, Straus & Boies, LLP and Green Noblin P.C. support the appointment of Scott+Scott from the  
 15 Nationwide Group to the PSC.

16 In an effort to build a broad-based coalition of well-qualified law firms, the Nationwide  
 17 Group supports the appointment Straus & Boies, LLP and Green Noblin P.C. to the PSC. In  
 18 addition to being excellent well-qualified law firms whose substantial knowledge and experience in  
 19 class action and antitrust law will benefit all plaintiffs, they represent several plaintiffs with indirect  
 20 purchases in states not currently represented by the Nationwide Group. When combined with the  
 21 Nationwide Group, nearly every state (and Puerto Rico) which allows an indirect purchaser remedy  
 22 is represented by one or more plaintiffs. The Nationwide Group further supports the appointment of  
 23 additional firms to the PSC that provide the broadest possible representation for all indirect  
 24 purchasers.

25 **III. CONCLUSION**

26 For the foregoing reasons, the Nationwide Group respectfully requests the Court appoint (1)  
 27 Scott+Scott, Attorneys at Law, LLP; (2) Schneider Wallace Cottrell Konecky LLP; (3) Branstetter,  
 28 Stranch & Jennings PLLC; and (4) The Lexington Law Group to the PSC, and appoint (1) Lief,

1 Cabraser, Heimann & Bernstein, LLP and (2) Cotchett, Pitre & McCarthy LLP as Interim Co-Lead  
2 Counsel.

3 DATED: March 28, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 28, 2013.

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